

## Chapter 12.58

### WIRELESS ~~MINOR~~ COMMUNICATION FACILITIES WITHIN CITY RIGHTS-OF-WAY

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#### **12.58.010 Purpose.**

The purpose of this chapter is to grant, through right-of-way use agreements, authority for the placement of ~~minor~~wireless communication facilities within the City rights-of-way, and to establish standards for right-of-way use agreements which:

- A. Compensate the City for the value of the use of the City right-of-way by wireless telecommunications providers; and
- B. Reimburse the City for ongoing costs associated with those uses of the City right-of-way; and
- C. Encourage competition by establishing consistent terms and conditions under which wireless telecommunications providers may use valuable public property to serve the public; and
- D. Fully protect the public and the City from any harm that may flow from such private use of City right-of-way; and
- E. Protect and carry out the authority of the City over activities in the City right-of-way, while recovering costs; and

F. Allow the City to exercise its stewardship responsibilities with regard to City right-of-way in a manner consistent with all applicable City policies and codes, including but not limited to the zoning code, the City comprehensive plan, City street standards; and

G. Otherwise protect the public interests in the development and use of the City right-of-way infrastructure and in preserving and improving the aesthetics of the community. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.010).]

#### **12.58.020 Definitions.**

The following terms shall be applicable to this chapter:

A. "City manager" means the City of Kenmore city manager or his or her designee(s).

AB. "Right-of-way" is land, property or property interest, such as an easement, usually in a strip, as well as bridges, trestles, or other structures, dedicated to, or otherwise acquired by the City for public motor vehicle transportation purposes, including, but not limited to, streets, avenues, and alleys, whether or not opened, improved or maintained for public motor vehicle transportation purposes.

BC. "Right-of-way use agreement" is an agreement between the City and a wireless telecommunications provider through which is granted a site-specific and revocable privilege to use county/city right-of-way at a location identified in the agreement for wireless telecommunications facilities, and through which are set forth the terms and conditions for exercising the granted privilege to use the City right-of-way.

CD. "Wireless telecommunications facility" is the capital, equipment and property, including but not limited to the poles, pipes, mains, conduits, ducts, pedestals, and electronic equipment within the right-of-way used for the purpose of transmitting, receiving, distributing, providing, or offering wireless telecommunications.

DE. "Wireless telecommunications provider" is every person that owns, controls, operates or manages a wireless minor telecommunication facility within the City right-of-way for the purpose of offering wireless telecommunication services (i.e., transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data).

EF. "Wireless" means transmissions through the airwaves including, but not limited to, infrared line of sight, cellular, microwave, or satellite. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.020).]

#### **12.58.030 Exemptions.**

The following wireless minor telecommunication facilities are not subject to the provisions of this chapter:

A. Facilities located or constructed by the City of Kenmore; and

B. Facilities located or constructed by emergency services within the City of Kenmore. [Ord. 05-0228 § 2; Ord. 03-0180 §§ 1, 2; (KCC 14.45.030).]

**12.58.040 Grant of authority – Right-of-way use agreement required.**

Wireless ~~minor~~ communication facilities shall only be located or constructed within City of Kenmore rights-of-way after a right-of-way use agreement is ~~issued~~approved by the ~~City of Kenmore~~city manager. Prior to ~~issuing~~approving the agreement, the City shall ensure that the proposed facility is located, designed and proposed to be constructed in a manner that complies with all applicable City policies and codes, including but not limited to the provisions of KMC Title 18, Zoning, the City comprehensive plan, City street standards, and the regulation for accommodations of utilities on City street rights-of-way adopted by KMC 12.55.080. Furthermore, the right-of-way use agreement shall only allow placement of wireless ~~tele~~communication facilities on improved and maintained City street rights-of-way. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.040).]

**12.58.050 Grant of authority – Effective period.**

The right-of-way use agreement constitutes authorization for the applicant to use the City right-of-way at the location specified in the agreement for no more than 10 years. Failure to comply with the terms and conditions of the right-of-way agreement, including payment of required annual compensation, is cause for revoking of the use agreement. The agreement holder shall remove facilities authorized by the agreement from the City right-of-way upon expiration of the agreement, unless renewed, or upon revocation of the agreement for cause. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.050).]

**12.58.060 Application – Contents.**

A. The City shall not commence review of any application set forth in this chapter until the applicant has submitted the following:

1. An application form provided by the City and completed by the applicant;
2. The name of the applicant and a designated contact person;
3. Plans and specifications for any structures, antenna or other equipment to be placed in the right-of-way or, if applicable, on abutting private property;
4. A vicinity map showing the specific location of right-of-way subject to the application;
5. When structures and equipment are to be located on abutting properties:

- a. A site plan illustrating the relationship to property lines and other structures on the site;
  - b. Legal description of the site abutting property; and
  - c. Proof that the abutting property is a legally recognized lot pursuant to KMC Title [17](#);
6. A critical areas affidavit if required by Chapter [18.55](#) KMC;
7. A completed environmental checklist, if required by Chapter [19.35](#) KMC; and
8. Payment of any review fees established by KMC Title [21](#);
- B. The applicant shall attest by written oath to the accuracy of all information submitted for an application.  
[Ord. 03-0180 §§ 1, 2; (KCC 14.45.060).]

#### **12.58.070 Application review.**

The department of ~~public works~~[engineering and environmental services](#) and the ~~community development~~[development services](#) department shall coordinate review and inspection of the application for a right-of-way use agreement and, to the extent required, any zoning approvals, building permits and environmental review under the State Environmental Policy Act, as follows:

- A. The department of ~~community development~~[development services](#) shall coordinate the review by all departments of right-of-way use agreement applications.
- B. The department of ~~public works~~[engineering and environmental services](#) shall review and evaluate applications with respect to the hazard and risk of the proposed construction and location of the proposed construction in relation to other utilities in the right-of-way.
- C. The department of ~~community development~~[development services](#) shall review and evaluate all applications to determine consistency with respect to the standards and requirements of Chapter [18.60](#) KMC and KMC Title [21](#). The department shall also be the lead agency for purposes of any environmental review required under Chapter [19.35](#) KMC. [Ord. 11-0329 § 6; Ord. 03-0180 §§ 1, 2; (KCC 14.45.070).]

#### **12.58.080 Application review and inspection fees.**

The following fees shall be required for the administrative costs and expenses of processing and inspecting a right-of-way use agreement application.

Review Agency	Fee
Community development Development services department (application processing)	Imposed by the city council by resolution
Community development Development services department (zoning review)	
Public worksEngineering and environmental services department (inspection)	

[Ord. 03-0180 §§ 1, 2; Ord. 02-0139 §  
1; (KCC 14.45.080).]

#### **12.58.090 Annual compensation for use of right-of-way.**

A. In consideration for continuing use of the City rights-of-way, an agreement holder shall commit to provide an annual use payment. The amount of the use payment shall be as follows:

Type of Equipment/Facility within the Right-of-Way	Use Payment
Separate support structure (such as a monopole or lattice) used solely for wireless antenna, with antenna/ receiver transmitter and/or equipment cabinet	Imposed by the city council by resolution
Antenna/receiver transmitter (on an existing or replacement pole) and equipment cabinet	
Antenna/receiver transmitter (on an existing or replacement pole) or equipment cabinet, but not both	

B. For the purpose of this section, “replacement pole” means a new utility pole replacing an existing utility pole in the City right-of-way with no increase in the total number of utility poles in the right-of-way. Replacement poles provide extra capacity to support attached wireless telecommunications facilities.

C. Use payments shall be paid to the City and are due upon the signing of the agreement, prorated to the end of the year, and the first of January every year thereafter.

D. All use payments prescribed by subsection A of this section shall be automatically escalated annually, beginning January 1, 2001, and every year thereafter, for the change in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (“CPI-U”) for the Seattle Tacoma-Bremerton Statistical Metropolitan Area for the preceding calendar year. In the event the CPI-U (or a successor or substitute index) is no longer published, a reliable government or other non-partisan index of inflation selected by the county shall be used to calculate the adjusted amounts. [Ord. 03-0180 §§ 1, 2; Ord. 02-0139 § 1; (KCC 14.45.090).]

#### **12.58.100 Insurance requirements.**

A. For any right-of-way use agreement, the agreement holder must carry commercial general liability, automobile liability and stop gap or employers liability coverage, each in minimum limits of not less than \$1,000,000, in an amount approved by the City of Kenmore. All policies must name the City of Kenmore as an additional named insured.

B. All policies shall be placed with insurers having a Bests’ rating of no less than A:VIII or, if not rated by Bests, with surpluses equivalent to or greater than Bests’ A:VIII rating. The agreement holder shall send copies of certificates, endorsements or other adequate evidence of compliance with this section to the office so designated in the application prior to the City’s execution of the agreement. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.100).]

#### **12.58.110 Liquidated damages.**

All right-of-way use agreements may provide for liquidated damages to compensate the City for harm caused by violation of an agreement or this chapter, or any applicable law in an amount which is a reasonable forecast of just compensation for the harm caused by the violation. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.110).]

#### **12.58.120 Liability and indemnification.**

A. All right-of-way use agreements shall contain the following provision: the holder of agreement shall have no recourse whatsoever against the county or its officials, boards, commissions, agents, or employees for any loss, costs, expenses, or damages arising out of any provision or requirement of the agreement, or KMC Title [21](#) because of the enforcement of the agreement, or KMC Title [21](#) except if such

loss, costs, expenses or damages are the result of the sole negligence or misconduct on the part of the City or its agents.

B. All right-of-way use agreements shall contain the following provision: to the extent permitted by law, the holder of the agreement shall, at its sole cost and expense, indemnify, hold harmless, and defend the City and its officers, boards, commissions, agents and employees, against any and all claims, including but not limited to third-party claims, suits, causes of action, proceedings and judgments for damages or equitable relief arising out of the construction, repair, maintenance or operation of its wireless telecommunication facilities, or in any way arising out of the agreement holder's enjoyment or exercise of the right-of-way use agreement granted pursuant, or otherwise subject to KMC Title [21](#), regardless of whether the act or omission complained of is authorized, allowed or prohibited by KMC Title [21](#) or an agreement. This provision includes, but is not limited to, expenses for reasonable legal fees and for disbursements and liabilities assumed by the City as follows:

1. To persons or property, in any way arising out of or through the acts or omissions of the agreement, its officers, employees, or agents or to which the agreement holders negligence shall in any way contribute;
2. Arising out of an agreement holder's failure to comply with the provisions of any federal, State or local statute, ordinance, rule, or regulation applicable to the agreement holder.

C. The City shall give the agreement holder timely written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by KMC Title [21](#). In the event any such claim arises, the City or any other indemnified party shall tender the defense thereof to the permit and the agreement holder shall have the right to defend, settle, or compromise any claims arising hereunder and the City shall cooperate fully therein. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.120).]

#### **~~12.58.130 Antenna and equipment cabinets/buildings abutting residential zones.~~**

~~Antenna and equipment cabinets/buildings abutting R zones shall be subject to the following:~~

~~A. Antennas shall not extend horizontally more than three feet from any pole to which it is mounted. This provision shall be reviewed one year after March 16, 2000, to evaluate aesthetic benefits upon residential neighborhoods and to determine the effects upon the ability of wireless service providers to reasonably and efficiently place facilities within the right of way. In order to facilitate this review, wireless service providers shall provide photographs documenting antennas located on all current facilities that are subject to right of way use agreements.~~

~~B. Electronic equipment cabinets or buildings shall be constructed underground when there is an existing residential dwelling unit within 300 feet, unless the required excavation will occur within the required buffers of critical areas, such as wetlands, streams and steep slopes, thus posing greater potential for environmental degradation of the critical area. [Ord. 03-0180 §§ 1, 2; (KCC 14.45.130).]~~